THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.8818, 9904, 10272 & 10756 OF 2005 AND 9617 OF 2006

DATED: 20-08-2007

BETWEEN

Mrs. Shameem Aga,
W/o. Late Syed Alamdar Hussain
@ Sajjad Aga and others.

...PETITIONERS

AND

Government of Andhra Pradesh,
Rep. by its Secretary Home (Gen-B)
Department, Secretariat Buildings,
Hyderabad and another.

...RESPONDENTS

COMMON ORDER:

W.P.Nos.8818 of 2005 and 9617 of 2006 have been filed by the same petitioners namely, Mrs. Shameem Aga and Mir Aga, the wife and son of Late Sajjad Aga respectively. W.P.No.9904 of 2005 has been filed by M/s. Aga Builders represented by its Managing Director, Mrs. Shameem Aga. W.P.No.10272 of 2005 has been filed by
Mrs. Shameem Aga, Mir Aga and two others. Mrs. Shameem Aga has filed W.P.No.10756 of 2005.

2. W.P.No.9617 of 2006 has been filed to quash the proceedings in C.C.No.6 of 2002 on the file of the Special Court – cum – Metropolitan Sessions Judge, Hyderabad (Cr.No.3 of 2002 under Sections 409, 420, 120-B of the Indian Penal Code, 1860 and Section 5 of the Andhra Pradesh Protection of Depositors Financial Establishments Act, 1999, of C.I.D. P.S.,

Hyderabad). The other writ petitions have been filed questioning the orders of the Government issued for attachment of the properties of the petitioners under Section 3 of the Andhra Pradesh Protection of Depositors Financial Establishments Act, 1999 (for short 'the Act').

3. It is the contention of the petitioners that the Government has no power to issue the orders in G.O.Ms.No.85 dated 28.03.2002; G.O.Ms.No.350 dated 05.12.2003; G.O.Ms.No.97 dated 12.04.2002 and G.O.Ms.No.126 dated 14.05.2002 to attach their properties under Section 3 of the Act and to set aside the same as illegal and arbitrary.

4. Learned counsel for the petitioners submits that on receipt of the complaint from the Registrar of Cooperative Societies, A.P. Hyderabad, about irregular functioning of the Chairman of the Charminar Cooperative Urban Bank Limited (hereinafter referred to as 'Charminar Bank') a case in Cr.No.3 of 2002 was registered by the CID, which was investigated by the Deputy Superintendent of Police, CID, City Zone, Hyderabad. During the course of investigation certain documents relating to movable as well as immovable properties acquired by the Chairman and other Directors of the Charminar Bank were seized on the ground that the deposited amounts were misused and that they have procured properties in their names, in the name of their relatives and family members. Subsequently, the Additional Director General of Police, CID, requested the Government of Andhra Pradesh to pass interim orders of attachment under Section 3 of the Act to attach the properties of the petitioners. Accordingly, the Government issued the aforesaid orders passing interim orders attaching the properties mentioned in the GOs. It is stated that under the Act the Government shall appoint a competent authority and notify the same before handing over the control of the attached properties under Section 4(1) of the Act but without appointing a competent authority, G.O.Ms.No.82 was issued and subsequently G.O.Ms.No.85 was issued rectifying the mistake committed in the earlier G.O., appointing the Additional Director General of Police, CID, as

competent authority. Pursuant to the said G.O., the properties were attached.

It is the case of the petitioners that the late Sajjad Aga the husband of Mrs. Shameem Aga and father of Mir Aga, who was the Chairman of the Charminar Bank, died on 26.02.2002 and issuance of the aforesaid GOs after the death of the Chairman of the Charminar Bank is illegal and arbitrary. It is stated that the Charminar Bank was registered under the Andhra Pradesh Cooperative Societies Act and the Andhra Pradesh Protection of Depositors of Financial Establishments Act, is applicable to the financial establishments defined under the Act only. The financial establishment as defined under Section 2(c) of the Act does not include a cooperative society. It is further stated that the banking company as defined under Section 5(c) of the Banking Regulation Act, 1949 is excluded from the definition of the financial establishment. Thus, it is the case of the petitioners that the Charminar Bank is a cooperative bank, therefore, it comes within the meaning of Section 5(c) and Section 56 A of the Banking Regulation Act, therefore, the Charminar Bank is a banking company under the Banking Regulation Act. Therefore, the State of Andhra Pradesh has no jurisdiction to invoke the provisions of the Act. Several other contentions have been raised stating that after the death of late Syed Alamdar Hussain @ Sajjad Aga, the offence committed by him will abate and Section 5 of the Act is not applicable to Charminar Bank, therefore, the aforesaid GOs as well as the C.C are liable to be quashed. It is stated that the Government has no jurisdiction to attach the properties under the Act, as the Act is applicable to financial establishments defined under the Act but not to a banking company, as the Charminar Bank is a banking company.

5. Counters have been filed on behalf of the respondents by the second respondent, who is the competent authority, stating that certain documents, jewelery and cash seized during the course of the investigation in the aforesaid crime by the investigating officer is being deposited in the Special

Court for passing of interim orders for attachment of the properties by the Government under Section 3 of the Act. It is stated that after the completion of investigation charge sheet was also filed in the Special Court (Metropolitan Sessions Judge), Hyderabad in C.C.No.6 of 2002 under Sections 120-B, 409 and 420 IPC read with Section 5 of the Act. It is stated that the Special Court has been notified as Metropolitan Sessions Judge, Hyderabad, which is constituted as Special Court under Act 17 of 1999. It is further sated that the Act has application to the Charminar Bank, therefore, the orders issued under Section 3 of the Act are legal and valid. The State has got power under Section 3 of the Act to pass interim orders of attachment of the properties covered by the aforesaid GOs in order to protect the depositors of the cooperative banks. Under Section 3 of the Act, movable and immovable properties are liable to be attached. The aforesaid orders are only for interim attachment of the properties and the said orders are liable to be made absolute by the Special Court.

Accordingly, the second respondent made an application in Crl.M.P.No.625 of 2002 under Section 4(3) of the Act to make the interim attachment order absolute in which the first petitioner also filed Crl.M.P.Nos.411 and 506 of 2002 under Section 7 of the Act for release of the said properties from interim attachment and as the petitioners failed to adduce any evidence in support of their case, their applications have been dismissed and the application of the second respondent/competent authority was allowed. The petitioners have not filed any appeal against the said order dated 16.07.2002 by availing the remedy under Section 11 of the Act. Therefore, it is stated that the petitioners are estopped from questioning the action of the respondents in these writ petitions.

6. It is the further case of the respondents that the properties attached, which are claimed by the petitioners, are purchased with the monies swindled and misappropriated by Late Syed Alamdar Hussain @ Sajjad Aga, while acting as Chairman of the Charminar Bank, therefore, it is incorrect to

state that the petitioners have purchased the said properties out of their individual and independent sources of income. It is stated that the Charminar Bank comes within the definition of financial establishment of the Act and therefore, the State has got jurisdiction and authority to legislate any enactment relating to the matters in List No. II of entry 32 of the Constitution of India. It is further stated that the Full Bench judgment of this Court and the Maharashtra High Court has been reversed by the Supreme Court in **GREATER BOMBAY COOPERATIVE BANK LIMITED v. M/s. UNITED YARN TEX. PVT. LIMITED**[1] held that the Cooperative societies established under the Andhra Pradesh Cooperative Societies Act transacting business on banking do not fall within the meaning of banking company as defined under Section 5(c) of the Banking Regulation Act, therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act) is not applicable to recover the dues by the cooperatives from their members. The field of cooperative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Cooperative Banks constituted under the Cooperative Societies Acts enacted by the respective States would be covered by cooperative societies by Entry 32 of List II of Seventh Schedule of the Constitution of India.

Thus, the learned counsel for the petitioners also submits that the contentions raised in these writ petitions that the provisions of the Act have no application to the Charminar Bank cannot be countenanced and as per the aforesaid judgment the provisions of the Act do apply for the Charminar Bank.

7. In the aforesaid case the Larger Bench of the Supreme Court decided the question that the dues of cooperatives and the recovery proceedings in connection with the Andhra Pradesh Cooperative Societies Act is a comprehensive and self-contained legislation.

Therefore, when there is an admittedly existing legal framework specifically dealing with issues pertaining to the cooperatives and especially when the cooperative banks are, in any case, not covered by the provisions of the RDB Act, there is no justification of covering the cooperative banks under the provisions of the RDB Act. Therefore, the only question that arises for consideration as to whether the provisions of the Act apply to the Charminar Bank.

8. As per the aforesaid judgment the cooperative bank is not a banking company. If that be so, Section 2(c) of the Act cannot exclude the cooperative bank, therefore, I am of the opinion that the provisions of the Act do apply to the Charminar Bank. Under Section 3 of the Act upon receipt of a complaint about the default in return of the deposits and if the State Government has a reason to believe that the financial establishment is acting in the manner prejudicial to the interest of the depositors with an intention to defraud the depositors and is not likely to return the deposits may order to protect the interest of the depositors of such financial establishment by passing an interim order of attachment of money and other properties alleged to have been procured either in the name of the financial establishment or in the name of any other person and from out of the deposits collected by financial establishment and transfer the control over the said property to the competent authority. In the instant case, the second respondent has been appointed as competent authority under Section 4 of the Act, therefore, the second respondent has got the power to discharge such functions specified under the Act.

The competent authority has already filed an application under Section 4(3) of the Act before the Special Court constituted under the Act to make the interim order of attachment absolute and the said order has already been made absolute, which has not at all been questioned by any of the petitioners.

9. It is also not in dispute that the State Government constituted the

Metropolitan Sessions Judge, Hyderabad as Special Court for the purpose of Section 6 of the Act. Therefore, the Special Court is only competent to decide the application filed by the competent authority for equitable distribution among the depositors from out of the realization of the properties attached. The proceedings before the Special Court are yet to be tried and appropriate orders yet to be passed. Against any order passed by the Special Court an appeal lies to the High Court, therefore, when the matter has been pending before the Special Court it is for the respective parties to work out their remedies before the Special Court and if aggrieved by any order, the appeal lies under Section 11 of the Act to the High Court. Therefore,

I am of the opinion that the impugned orders of the Government in the aforesaid GOs do not suffer from any legal infirmity or otherwise.

10. Insofar as quashing C.C.No.6 of 2002 on the file of the Special Court – cum – Metropolitan Sessions Judge, Hyderabad, is concerned, I am of the opinion that the same cannot be quashed as per the judgment of the Supreme Court in **STATE OF ORISSA v. SAROJ KUMAR SAHOO**[2] wherein it has been ruled that even assuming that the allegations in the FIR are correct and constitute an offence so as to remove the legal bar to institute the proceedings in a Court, the Court cannot at that stage appraise the evidence collected by the police in their investigation. Where the investigation is not completed it is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 Cr.P.C it is not permissible for the court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground to proceed against the accused. The Court can evaluate the material and documents on record for limited purpose, but it cannot appreciate the evidence. The Court is not required to appreciate evidence to conclude whether the material produced are sufficient or not for convicting

the accused. When the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 Cr.P.C, which cannot be termed as evidence without being tested and proved. In view of the aforesaid principles of law highlighted, I am of the opinion that it is not justified in quashing the charge sheet in C.C.No.6 of 2002. For the aforesaid reasons, I do not see any merits in the writ petitions and the writ petitions are liable to be dismissed.

The writ petitions are accordingly dismissed and the interim orders granted earlier automatically stand vacated. There shall be no order as to costs.

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V. ESWARAIAH, J

August 20, 2007
DSK

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[1] 2007 (5) SCALE 366

[2] (2006) 2 SCC (Cri) 272